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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000262

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [OSCE](#) [TU](#)  
SUBJECT: COURT DROPS PAMUK CASE

REF: A. 05 ISTANBUL 2134

- [1](#)B. 05 ANKARA 7676
- [1](#)C. 05 ANKARA 7242
- [1](#)D. 05 ANKARA 7219
- [1](#)E. 05 ISTANBUL 2020
- [1](#)F. 05 ANKARA 6930
- [1](#)G. 05 ANKARA 6229
- [1](#)H. 05 ISTANBUL 1780

Classified by DCM Nancy McEldowney; reasons 1.4 b and d.

[1](#)1. (U) Summary/Comment: An Istanbul court has dropped the case against Turkish novelist Orhan Pamuk. The court did so on a technicality after Justice Minister Cicek declined to either grant or deny permission to proceed with the trial. While this is good news, attorney contacts believe the decision likely will not have a broader impact on freedom of expression in Turkey.

[1](#)2. (C) It is good that the Pamuk case is gone, as it had become an Achilles heel for Turkey. This provides an opportunity to modestly welcome the outcome and encourage more progress. EU Enlargement Commissioner Rehn did this on January 23 when he released a statement calling the court's decision "good news," while also noting that others face similar charges for controversial speech. At the same time, however, Rehn told a group of journalists at a private dinner January 20 that the Pamuk case had done as much harm to Turkey's image as the movie Midnight Express did in the 1970s and 80s, a point made publicly several weeks ago by FM Gul. This is one case, under the old Penal Code. More progress is needed, both in the law and in the way government officials deal publicly with such cases.

[1](#)3. (C) GOT officials often maintain that they cannot respond to these types of prosecutions because the judiciary is independent and to do so would constitute interference. In this case, however, Cicek had the authority and the obligation to make a clear decision. He declined to do so. Instead, Cicek prolonged an embarrassment that has highlighted Turkey's shortcomings in the area of freedom of expression and undermined the country's image in the EU, and his actions appear to have gone unchecked by PM Erdogan and FM Gul. End Summary/Comment.

[1](#)4. (U) An Istanbul prosecutor in September charged Pamuk with

"insulting Turkish identity" in an interview with a Swiss magazine during which Pamuk said that 30,000 Kurds and 1 million Armenians had been killed in Turkey. At the opening hearing of his trial December 16 (reftel A), the court postponed proceedings pending a decision by the Ministry of Justice (MOJ) on whether the trial could take place. Under the Penal Code effective at the time Pamuk made his comments, MOJ approval was required before courts could prosecute such cases. This is no longer true under the new Penal Code, which went into effect in June 2005. However, under Turkish law, legal amendments cannot be applied retroactively if they are prejudicial to a defendant. The Istanbul court, therefore, determined that it needed MOJ approval to proceed.

15. (U) The High Court of Appeals appeared to support the Istanbul court's position in late December when it ruled in an unrelated case that a trial on similar speech-related charges dating to the old Penal Code could not proceed without MOJ approval. Cicek, too, appeared to have accepted his responsibility when, shortly before Pamuk's December 16 hearing, he stated that he would make a clear decision, either granting or denying permission to proceed with the Pamuk trial. In the event, however, Cicek skirted the issue, claiming that MOJ had no role in the case. According to the MOJ, the relevant legislation is not the Penal Code but the Criminal Procedure Code, which does not require MOJ approval for prosecutions. The Istanbul court determined that it could not proceed without MOJ approval.

16. (C) Attorney contacts told us the ruling addresses a technicality that does not have broader implications for freedom of expression in Turkey. Sezgin Tanrikulu, chairman of the Diyarbakir Bar Association, noted that the Istanbul court requested MOJ permission for the case back in May 2005.

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He said Cicek should have made his decision long before the trial's first session in December. Yusuf Alatas, attorney and president of the Human Rights Association, averred that under the law, Cicek should have made a decision either granting or denying permission for the trial. Nevertheless, he said, the Istanbul court has no authority to challenge Cicek's position, and was therefore required to drop the case. Alatas said this will set a precedent only for similar speech cases opened under the old Penal Code -- i.e., Cicek is likely to decline to authorize similar prosecutions under the old code, causing them to be dropped. It will have no effect on newer cases opened under the current Penal Code, including those involving the code's controversial Article 301. (Note: Under the new Penal Code, MOJ permission is not required to prosecute under Article 301. End note.)

WILSON